Rec'd & Remanded for new trial

Judge Dany Dis'd on bench

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~495~~ 188

THE BANK OF LOUISIANA, BY JOSIAH MORRIS, ITS AGENT, CLAIMANT OF ONE HUNDRED AND NINETY-TWO BALES OF COTTON, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED DECEMBER 30, 1868.

# SUPREME COURT OF THE UNITED STATES.

## No. 405.

THE BANK OF LOUISIANA, BY JOSIAH MORRIS, ITS AGENT, CLAIMANT OF ONE HUNDRED AND NINETY-TWO BALES OF COTTON, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

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District Court of the United States for the middle district of Alabama.

1 *Petition of appeal.*

JOSIAH MORRIS, AGENT FOR AND ON BEHALF of the Bank of Louisiana, appellant,
*vs.*
UNITED STATES, appellee.

UNITED STATES OF AMERICA:

To the Supreme Court of the United States:

The petition of appeal of the above-named Bank of Louisiana, by its agent acting on its behalf, respectfully shows: That a decree was lately made in the District Court of the United States for the middle district of Alabama, bearing date the 13th day of M'ch, and filed in court on the 14th day of March, 1868, in a certain cause therein pending, wherein the United States was libellant, and the above-named Josiah Morris, for and on behalf of the Bank of Louisiana, was claimant of one hundred and ninety-two bales of cotton,
2 in and by which said decree it was ordered, adjudged and decreed judgment for the United States of America, and that the property mentioned in [in] the libel of information be and is declared forfeited and condemned to the use of the United States of America, as provided by law, and that execution issue for costs against the claimants, which decree of said District Court is, as this appellant is advised, erroneous and ought to be reversed.

Wherefore this appellant prays that the said decree may be reversed, and that such other decree may be made by this court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which it has lost by said decree, and this appellant will ever pray.

Dated this 24th day of March, 1868.

A. MARTIN, *Proctor.*
W. P. CHILTON, *Advocate.*
THE BANK OF LOUISIANA,
By MARTIN & SAYRE, *Proctors.*
JOSIAH MORRIS, *Agent.*

Filed March 24th, 1868.

E. C. V. BLAKE, *Cl'k.*

3 *Appeal bond.*

UNITED STATES
*vs.*
ONE HUNDRED AND NINETY-TWO (192) BALES of cotton, the Bank of Louisiana, by Josiah Morris agent, claimant, *et als.*

Know all men by these presents that we, the Bank of Louisiana and Josiah Morris, are firmly held and bound unto the United States

of America in the sum of twenty-five thousand dollars, to be paid to the United States. To which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Dated this 24th day of March, A. D. 1868.

Whereas, the above-bound, the Bank of Louisiana, by Josiah Morris, its agent, has appealed from a decree rendered by the District Court of the United States for the middle district of the State of Alabama, to the Supreme Court of the United States, said decree being made in the above cause, and bearing date the 13th day
4 of March, A. D. 1868, and filed in court on the 14th March, 1868, the United States being libellant, and the said the Bank of Louisiana, by the said Josiah Morris, agent, and others, is respondent, and prays to supersede the distribution of the funds, leaving the same in the custody of the law:

Now, therefore, the condition of this obligation is such, that if the bound appellant shall prosecute the said appeal with effect, and pay all such judgment, decree, damages, costs and expenses as shall be awarded against him as such appellant therein, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] BANK OF LOUISIANA,
By MARTIN & SAYRE,
*Attorneys in fact.*

[SEAL.] JOSIAH MORRIS.

I approve this bond as to its form and sufficiency.
RICHARD BUSTEED.

March 24, '68.

5 JOSIAH MORRIS, AGENT OF THE BANK OF Louisiana, claimant of 192 bales of cotton, appellant,
*against*
THE UNITED STATES, appellee.

UNITED STATES OF AMERICA, *Middle District of Alabama*:

At a District Court of the United States for the middle district of Alabama, begun and held at Montgomery, on the day of , one thousand eight hundred and sixty.

Present: the Honorable Richard Busteed, judge presiding.

District Court of the United States of America for the Middle Dis- District of Alabama.

*Information.*

To the judge of the District Court of the United States for the Middle District of Alabama:

6 James Q. Smith, esquire, attorney of the United States for said district, who prosecutes for the United States, and an informant, exhibits this information against a certain one hundred

and ninety-two (192) bales of cotton, marked J. C. B. M., B. L. and W. H. O., now in the warehouses of Lehman, Durr & Co., and Stickney, Owen & Co., in the city of Montgomery, in the district aforesaid, seized and now in custody of John Hardy, marshal of said district, under an order of seizure issued by the said attorney of the United States, on the 21st day of April, 1866, and against all persons lawfully intervening for their interest therein. And thereupon the said attorney doth allege, articulately propound, and give the said judge to understand, that in and during the years 1861, 1862, 1863, 1864 and 1865, in the district aforesaid, on land, the said property was knowingly used and employed by the owners, and with the consent of the owners of said property, in aiding, abetting and promoting an insurrection and rebellion against the government of the United States.

7 First. For that heretofore, to wit, in and during the years aforesaid, and after the proclamation of the President of the United States, referred to in the act of Congress, entitled "an act to confiscate property used for insurrectionary purposes," approved August the 6th, 1861, the property hereinbefore described was knowingly used and employed, in the district aforesaid, by the owners, and with the consent of the owners thereof, in aiding, abetting and promoting said insurrection or resistance to the laws and authority of the United States.

Second. For that heretofore, to wit, in and during the years aforesaid, in the district aforesaid, after the passage of the act aforesaid, and the publication of the proclamation aforesaid, the said property was knowingly used and employed by the owners, and with the consent of the owners thereof, in aiding, abetting and promoting persons engaged in aiding, abetting and promoting said rebellion and resistance to the laws and authority of the United States, in

8 this, that in and during the years aforesaid, said property was used, with the knowledge and consent of the owners thereof, by selling and subscribing the same to what was known as the late so-called "confederate States cotton produce loan," for the defence of the confederate States, to the agents of said conf'te States, and by selling the same to persons residing within the federal lines during the rebellion, and at a time when all commercial intercourse between persons residing within the lines of the U. States, and persons in rebellion and resistance to the laws and authority of the United States, thereby aiding, abetting and promoting said persons in their said rebellion and resistance to the laws and authority of the United States, contrary to the form of the statute of the United States, in such case made and provided. The said attorney of the United States, on behalf of the United States, saieth that all and singular the premises are true.

Wherefore he prays that process in due form of law may

9 issue against the said property, to enforce the seizure, confiscation and condemnation of the same, and requiring notice to be given to all persons concerned in interest to appear and show

cause, on the return day of said process, why such property should not be decried.

JAMES Q. SMITH,
*United States District Attorney, Middle Dist. Ala.*

Endorsed: Filed Ap'l 21st, 1866. E. C. E. Blake, Cl'k.

*Warrant of arrest.*

The President of the United States of America to the marshal of the middle district of Alabama, greeting:

Whereas an information hath been filed in the District Court of the United States for the middle district of Alabama, on the 21st day of April, in the year 1866, by James Q. Smith, esquire, attorney of the United States for said district, on behalf of the United States of America, and an informer against one hundred (192) bales of cotton supposed to be in the warehouses of Lehman, Duer & Company, and
10 Stickney, Owen & Co., in the city of Montgomery, dist aforesaid, marked J. C; B. M; B. L. and W. H. O., for reasons and causes in said informations mentioned, and praying the usual process and monition of the court in that behalf to be made, and that all persons interested in said property may be cited in general and special, to answer the premises, and all due proceedings being had, that the said property mentioned be condemned, and the proceeds thereof distributed according to law:

You are hereby commanded to attach the said property, and to detain the same in your custody untill the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed, according to the prayer of said information, that they be and appear before the said court, to be held in and for said district on the fourth Monday in May next, at 10 o'clock in the forenoon of that day, if the same should be a day of jurisdiction other-
11 wise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make these allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Richard Busteed, judge of the said court, in the middle district of Alabama, the fourth Monday of November, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth year.

[L. S. OF COURT.] E. C. V. BLAKE, *Clerk.*

*Marshal's return.*

In obedience to the within command I have arrested one hundred and ninety-two bales of cotton, being the same mentioned in the warrant, and having cited all persons having or pretending to have

any interest, right, or title therein to be and appear at the next term of said court, and show cause why the same should not be condemned as forfeited to the U. States.

Ap'l 21, 1866.

JOHN HARDY, *Marshal.*
By W. B. GOWEN, *Dept. Marshal.*

12 The United States of America District Court, middle district of Alabama, spring term, 1868.

THE UNITED STATES
*vs.*
192 BALES OF COTTON, H. C. Caulkins & J. C. Harris, claimants.

The said H. C. Caulkins and J. C. Harris, claimants as aforesaid, not confessing or acknowledging all or any of the matters and things alledged by the said James Q. Smith, esquire, on behalf of the United States, and an informer in the information filed in this cause, file exceptive allegations, as well as answers to the same, and for exceptive allegations say :

1st. That the said information is insufficient in law to authorize the consideration of said one hundred and ninety-two bales of cotton to the uses in that behalf in the same alleged.

2d. That said information does not disclose the name of the informant on whose behalf, jointly with the said United States, the same is prosecuted.

3d. That two separate, distinct and disconnected forfeitures are set up and alleged in the same count of said information.

13 And the said claimants not waiving their said exceptive allegations, but insisting thereon; and now and at times hereafter reserving all benefit of exception that can or may be had or taken to the errors and insufficiencies in the said information contained, and the right to put in such further pleas, answers, allegations and claims, as they may be advised, say :

1st. That they are the owners of the said one hundred and ninety-two bales of cotton in the information mentioned, and that the said one hundred and ninety-two bales of cotton did not, nor did any part thereof become forfeited in manner and form in the said information alleged.

2. That said one hundred and ninety-two bales of cotton were not sold and subscribed to what was known as the late so-called confederate States cotton produce loan for the defense of the late confederate States, to the agents of the confederate States.

3. That said claimants purchased said cotton bona fide, and for a valuable consideration after the termination of said alleged insurrection and rebellion, and after the alleged forfeitures in the said

14 information mentioned, to wit, on the 6th day of December, 1865, and that said claimants, at the time of their said purchase, had no notice of the said alleged forfeitures.

4. That said insurrection and rebellion in the said information mentioned had been suppressed before the filing of the said information, and before the said cotton or any part thereof had been seized, as set up and alleged in said information.

5. That said one hundred and ninety-two bales of cotton were grown and raised by one Julius C. B. Mitchell, a citizen of the county of Montgomery, in said district, and said Mitchell was the owner thereof, and continued to be the owner thereof, until he sold the same to said claimants for a valuable consideration afterwards, to wit, on the 6th day of December, 1865.

6. That said alleged forfeitures in the said information mentioned occurred while the said Julius C. B. Mitchell was owner, as aforesaid, of the said cotton, and afterwards, and before the said sale to said claimants, as aforesaid, he, the said Julius C. B. Mitchell had
15 received the President's warrant of pardon and amnesty, and had fully complied with all the conditions thereof, whereby the said Lucius C. B. Mitchell was fully pardoned, and amnesty given to him for all offences by him committed, arising from participation direct or implied in said rebellion in the said information mentioned.

And the said claimants are ready to verify their foregoing answer and pleas by their own oath, and otherwise, as this honorable court shall direct.

H. C. CAULKINS.
J. C. HARRIS.
WATTS & TORY, *Att'ys.*

Sworn to and subscribed before me this the 5th day of June, A. D. 1867.

E. C. V. BLAKE,
*Clerk D. C. for Mid. Dist. of Ala.*

Filed June 5, '66.

E. C. V. BLAKE, *Cl'k.*

District Court, May term, 1866.

16 THE UNITED STATES
*vs.*
ONE HUNDRED AND NINETY-TWO bales of cotton.

UNITED STATES OF AMERICA, *Middle District of Alabama*:

And now come Harvey C. Caulkins and John C. Harris, and claim the one hundred and ninety-two bales of cotton in the information in this behalf mentioned, and allege that they are the true bona fide and lawful owners of the said one hundred and ninety-two bales of cotton, and that no other person is the owner thereof, and of this they are ready to make proof by their own oath, and otherwise, as the said court shall direct.

JNO. C. HARRIS,
H. C. CAULKINS,
*Claimants.*
WATTS & TORY, *Att'ys.*

Sworn to before me this the 2d day of June, 1866.

E. C. V. BLAKE
*Clerk U. S. District for Mid. Dist. of Alabama.*

Filed in office June 2d, 1866.

E. C. V. BLAKE, *Cl'k.*

17 May term, June 14th, 1866.

UNITED STATES
*vs.*
192 BALES OF COTTON.

Ordered in this case that unless the United States district attorney, within thirty days from to-day, receive instructions from the Attorney General of the United States to discontinue all proceedings in this case, the United States marshal will sell the cotton according to the course and practice in such case made and provided. This disposition of the case is made by the court of its own motion.

District Court of the United States, middle district of Alabama, Nov. term, 1866.

*Amended libel.*

U. S. AMERICA
*vs.*
192 BALES OF COTTON.

Amendment to the libel of information in this proceeding.

First. That heretofore, that is to say after the passage of a certain other act of the Congress of the United States, entitled "An
18 act further to provide for the collection of duties on imports, and for other purposes," approved July 13th, 1861, among other things it is provided, "That whenever the President, in pursuance of the provisions of the second section of the act entitled 'An act to provide for calling for the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the act now in force for that purpose,' approved February 28th, 1795, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or the persons exercising the functions of government in such State or States, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then and in such case it may and shall be lawful for the
19 President of the United States, by proclamation, to declare that the inhabitants of such State or States, or any section or parts thereof, where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof, and the

citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States; provided, however, that the President may in his discretion license and permit commercial intercourse with any such part of such State or section the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons as he
20 in his discretion may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury."

That under and by virtue of the acts aforesaid the President of the United States on the 16th day of August, 1861, issued his proclamation, and among other things it is declared "that the inhabitants of the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi and Florida (except certain parts of the State of Virginia and such other part of that State and other States as may maintain a loyal adhesion to the Union and the Constitution, or may be from time to time occupied and controlled by the forces of the United States engaged in the dispersion of said insurgents) are in a state of insurrection against the United States, and that all commercial intercourse between the same and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States and other
21 parts of the United States is unlawful, and will remain unlawful until such insurrection shall cease, or has been suppressed."

Second. That heretofore, that is to say after the passage of the act of Congress aforesaid, and after the publication by the President of the United States of the proclamation mentioned therein, one George G. Stever, an inhabitant of the city of New Orleans, in the State of Louisiana, one of the States mentioned as in insurrection by said proclamation, the said city of New Orleans being at the time occupied and controlled by the forces of the United States engaged in the dispersion of said insurgents, acting for himself and for various other persons, inhabitants of said city, (and whose names are now unknown,) with the object and intent to violate the provisions of said act and the proclamation of the President of the United States, did leave the said city of New Orleans, then occupied and controlled as aforasaid, and passed through the lines of the United States forces then occupying and controlling said city, and into the
22 State of Alabama, one of the States declared in said proclamation to be in insurrection, and engaged in and carried on with a citizen or inhabitant of said State commercial intercourse in this, that he, said Stever, acting as aforesaid, purchased from one Julius C. B. Mitchell, an inhabitant of the said State of Alabama, one hundred and ninety-two bales of cotton, said cotton being at the

time in said State of Alabama, in the middle district of said State, and within the jurisdiction of this court; that the said Stever, acting as aforesaid, when said purchase was made of the said one hundred and ninety-two bales of cotton, had not obtained a license and permit from the President of the United States to engage in or carry on commercial intercourse with any of the citizens or inhabitants of the State of Alabama, then in insurrection against the government of the United States, nor had the said other persons, or any of them, a license and permit to engage in or carry on commercial intercourse with the citizens of the State of Alabama as aforesaid, whereby
23 and by reason of which the said one hundred and ninety-two bales of cotton became and were forfeited to the United States.

Third. That heretofore, that is to say, after the passage of a certain other act of the Congress of the United States, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved July 17th, 1862, wherein it is provided, among other things, that any person within any State or Territory of the United States, after the passage of this act, being engaged in armed rebellion against the government of the United States, or aiding and abetting such rebellion, shall not, within sixty days after public warning and proclamation duly given and made by the President of the United States, cease to aid, countenance and abet such rebellion, and return to his allegiance to the United States, all the estate and property, monies, stocks and credits of such person, shall be liable to seizure, and it shall be the duty of the President to seize and use the
24 same, or the proceeds thereof; and all sales, transfers or conveyances of any such property, after the expiration of the said sixty days from the date of said warning and proclamation, shall be null and void." The said Julius C. B. Mitchell, at the time of the passage of said act being engaged in armed rebellion against the United States, and being engaged in aiding and abetting such rebellion, did not within sixty days after public warning and proclamation duly given and made by the President of the United States, cease to aid, countenance and abet such rebellion, and return to his allegiance to the United States. That the said Julius C. B. Mitchell, at the time of the passage of said act, and at the time of the issuance of said proclamation, and at the expiration of said sixty days' public warning, was the owner of the said one hundred and ninety-two bales of cotton, in the district aforesaid, and within the jurisdiction of this court, when the said cotton was found. Whereby and by reason of
25 the premises, the said cotton, as the property of said Julius C. B. Mitchell, became and was liable to seizure by the President of the United States for the uses in said act mentioned, and being so liable, the said Julius C. B. Mitchell sold the same to the Bank of Louisiana, through the agent of said bank, on or about the day of October, 1862.

JAMES Q. SMITH,
*U. S. Dis't Att'y.*

Endorsed: Filed this 12th day of Novb., 1866.
E. C. V. BLAKE, *Clerk.*

District Court of U. S. for middle district of Alabama.

*Claim bond.*

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Josiah Morris, W. C. Ray, and William H. Smith, are held and firmly bound to the United States of America, in the sum of two hundred dollars, lawful money of the said United States, to be paid to the United States, for
26 the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 7th day of June, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas information has been filed in the District Court of the United States of America for the middle district of Alabama, on the day of , in the year of our Lord one thousand eight hundred and sixty-six, by J. Q. Smith, esqr., att'y, &c. of the said United States for the district aforesaid, against 192 bales of cotton, marked J. C., B. M., B. L., and W. H. O., alleged to have been seized by the marshal of said district, in the warehouse of Lehman, Durr & Co., and Stickney, Owens & Co., in the city of Montgomery, for reasons and causes in the said information mentioned, and praying that the same may be condemned as forfeited to the uses in the said information specified. And whereas, also, a claim has been filed in
27 the [in the] said court by the said Josiah Morris:

Now, therefore, the condition of this obligation is such, that in case the said Josiah Morris shall not support his said claim, if the said Josiah Morris, W. C. Ray, and W. H. Smith, or either of them, or the heirs, [or the heirs,] administrators, or executors of the said Josiah Morris, W. C. Ray, and W. H. Smith, or either of them, shall pay all such costs, as by reason of his failure to support his said claim he ought to pay, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] JOSIAH MORRIS.
[SEAL.] W. C. RAY.
[SEAL.] WM. H. SMITH.

Filed June 8th, 1866.

E. C. V. BLAKE, *Clerk.*

Fall term.

DECEMBER 3*rd*, 1866.

James Q. Smith, esq., U. S. att'y, asked leave to file amended libel of information in the following cases: U. S. *vs.* 192 bales of cottons.

Leave granted.

28 District Court of the United States for the middle district of Alabama, spring term, 1866.

UNITED STATES
*vs.*
192 BALES OF COTTON.

Comes Josiah Morris, by Chilton & Rice, his proctors, and makes his claim, answer, pleas and exceptive allegations to the information filed in this case by J. Q. Smith, esq., the [the] district attorney for said district, against 192 bales of cotton marked J. C.; B. N.; B. L.; and W. H. O., now in the warehouse of Lehman, Durr & Co., and Stickney, Owens & Co., in the city of Montgomery, and State of Ala., the said information being exhibited in behalf of the United States, and an informer.

And the said Josiah Morris, doth allege and propound as follows, to wit:

First. That he, the said Josiah Morris, is the true and bona fide bailee of said cotton in virtue of certain legal proceedings had and now pending in the Circuit Court of Montgomery county, wherein

29 Edward H. Wilson is plaintiff, and the Bank of Louisiana, a corporation created by and organized under an act of the legislature of the State of Louisiana, and located at the city of New Orleans, is defendant; the said suit having been commenced by attachment issued on the 10th day of July, 1865, and the said cotton was levied upon in virtue of said attachment on the 11th day of July, 1865, and the same was taken into the custody of the said court in virtue of said process and levy.

And afterwards, to wit, on the day of , 1865, the said cotton was ordered to be sold by the judge of the said Circuit Court, but the said judge by a subsequent order permitted and authorized the said cotton to be replevied; and thereupon the said Josiah Morris, on the 9th day of January, 1866, as by the laws of the State of Alabama he had a right to do, replevied said cotton, with other cotton levied upon under said process, and executed of said date his replevy bond in the sum of one hundred and eighty-six thousand eight hundred and twenty-five dollars, payable unto the said Edward H. Wilson, upon condition that if the defendant fail in the action, and the

30 said Josiah Morris, or his sureties, will return the said cotton attached as aforesaid, within thirty days after judgment, then the said bond to be void; and the said Morris gave on the said bond, W. C. Ray, H. F. Gwin, E. H. Metcalf, and D. Browder, as his securities, which said bond was duly approved and filed in said court, and is now in full force and effect in law; all which will fully appear by reference to the proceedings of said Circuit Court in Montgomery county, a copy of which, together with the replevy bond aforesaid, is hereto attached marked "Exhibit A," and prayed to be taken as a part hereof; and so the said Josiah Morris avers that he is a true and bona fide bailee of the said cotton for the parties litigant in said suit, and that no person other than said parties, whose claim he represents as bailee aforesaid, have any interest in said cotton.

And this claimant, proceeding to answer the several allegations in the said information contained, doth thereupon allege and propound as follows, to wit: That it is not true, as stated in the first article of said information, that during the years 1861, 1862, 1863, 1864 and 1865, or during either of those years, and after the proclamation of
31 the President of the United States, referred to in the act of Congress, entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, the property hereinabove described was knowingly used and employed in the district aforesaid, or elsewhere, by the owners, or with the consent of the owners thereof, in aiding, abetting, or promoting any insurrection or resistance to the laws and authority of the United States.

Second. The said claimant, further answering, alleges and propounds, that it is not true, as stated in the second article of said information, that during the years aforesaid, in the district aforesaid, or other place whatsoever, after the passage of the act aforesaid, and the publication of the proclamation aforesaid, or at any other time, the said property was knowingly used and employed by the owners, or with the consent of the owners thereof, in aiding, abetting, or promoting persons engaged in aiding, abetting, or promoting any rebellion or resistance to the laws or authority of the United States; and this claimant denies that the said cotton was ever sold to
32 the so-called confederate States, or that the same, or any part thereof, was set apart or in anywise designated as cotton subscribed to the so-called "confederate States cotton produce loan;" and he denies that the late so-called confederate States ever had any right, title, claim or interest in said cotton as such; said claimant has been informed and believes that Julius C. B. Mitchell, from whom the said Bank of Louisiana purchased the said cotton, did subscribe to what is [is] improperly styled the so-called confederate States cotton produce loan, called so improperly, because the subscription did not propose or agree to a loan of the cotton therein mentioned to the confederate States, but the cotton was to be sold, not by the confederate States, but by said Mitchell, or his designated factor, and the proceeds of said sale were to be applied to the purchase of eight per cent. coupon bonds from the said late so-called confederate States. He is informed and believes, and so states, that the number of bales subscribed as aforesaid by said J. C. B. Mitchell was 150 bales, that it, the cotton so subscribed, nor any part
33 of it was never set apart or seperated from the other cotton of said Mitchell, or in anywise designated as cotton subscribed as aforesaid; and this claimant, further answering, avers that said Mitchell was, by the laws and regulations of the said so-called confederate government, authorized to invest treasury notes in said bonds to an amount agreed upon as an approximation to the probable proceeds of said cotton if sold, and thus to satisfy said subscription. And this claimant avers that said subscription was satisfied and fully paid up and discharged, and that the said Mitchell sold bona fide this cotton in the said information named to the said Bank of Louisiana through its agent and broker, W. C. Ray, of Montgomery, Alabama, and de-

livered the same to said bank; and this claimant denies that said cotton was sold to persons residing in the federal lines; on the contrary, the same was sold to said bank, a corporation as aforesaid, and the said bank had full and ample authority to bring the means which bought the said cotton into the State of Alabama, and to invest the same in the purchase of said cotton as aforesaid. This claim-
34 ant denies that said cotton was purchased by said bank in violation or contravention of any commercial regulation of the United States relating to commercial intercourse between persons residing within the lines of the United States and persons in rebellion or resistance to the laws of the United States; and said claimant denies that any use was made or intended to be made of said cotton to aid or promote said insurrection or rebellion, or to abet or promote persons engaged in said insurrection or rebellion, by the said bank or any one else having control or ownership of the said cotton.

And this claimant avers and propounds, by way of answer, as well as plea to that part of said information charging a subscription of said cotton to the so-called Confederate States cotton produce loan; that none of the said cotton was ever subscribed by the said Bank of Louisiana, or by this claimant, or by any person represented by him, or any owner of said cotton, unless the said subscription, made by the said Julius C. B. Mitchell, as hereinabove set forth, amounts in law to a subscription of said cotton, or of some
35 part thereof; and this claimant here reiterates all that he has above stated in this answer relating to said subscription by said Mitchell, and denies that it amounts to a subscription of any part of said one hundred and ninety-two bales of cotton; and, in addition to all this, this claimant states that whatever of guilt or wrong there was in the sale of said cotton to said bank by the said Mitchell, and whatever wrong or violation of public law, or aiding, abetting, or promoting of the said insurrection or rebellion, or persons engaged in aiding, abetting, or promoting said insurrection or rebellion, or resistance to the laws of the United States, is involved in the conduct of said Metcalf in the matter of said subscription, was before the alleged seizure of said cotton fully condoned and pardoned by the President of the United States, Andrew Johnson, to wit, on the 19th day of August, 1865, as by the warrant of pardon granted on said day last named to said Mitchell, which in substance and legal effect is as follows:

Andrew Johnson, President of the United States, to all to whom these presents shall come, greeting:

36 Whereas J. C. B. Mitchell, of Montgomery county, Alabama, by taking part in the late rebellion against the government of the United States, has made himself liable to heavy pains and penalties; and whereas the circumstances of his case render him a proper object of executive clemency: Now, therefore, be it known, that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said J. C. B. Mitchell a full par-

don and amnesty for all offences by him committed, arising from participation, direct or implied, in the said rebellion, conditioned as follows:

1st. This pardon to be of no effect until the said J. C. B. Mitchell shall take the oath prescribed in the proclamation of the President, dated May 29th, 1865.

2d. To be void and of no effect if the said J. C. B. Mitchell shall hereafter at any time acquire any property whatever in slaves, or make use of slave labor; and

3d. That the said J. C. B. Mitchell first pay all costs which may have accrued in any proceeding hitherto instituted against his
37 person or property.

5th. And upon the further condition that said J. C. B. Mitchell shall notify the Secretary of State in writing that he has received and accepted the foregoing pardon.

In testimony whereof I have hereunto signed my name, and caused the seal of the United States to be affixed. Done at the city of Washington, this the nineteenth day of August, 1865, and of the independence of the United States the ninetieth.

ANDREW JOHNSON.

By the President:

WM. H. SEWARD,
*Secretary of State.*

And he has here and shows to this honorable court the said original warrant of pardon; and that on the eighth day of September, 1865, he took the oath prescribed in said pardon and in the proclamation of the President of the United States of the 29th of May, 1865, before A. Tunstare Welch, a notary public in the District of Columbia, who was duly authorized to administer the same; and on the seventh day of September, 1865, he notified the Secretary of State in writing that he had received and accepted the said warrant of pardon, on the conditions therein specified; all of which
38 the said claimant is ready to verify; wherefore, and by reason of any allegation in the said information set forth and contained that said cotton became subject to forfeiture or condemnation "by selling and subscribing the same to what was known as the so-called Confederate States cotton produce loan, for the defence of the Confederate States, to the agents of the Confederate States," the said cotton should not be condemned by this court, and he prays judgment of said allegation in said information, and that as to that portion of the same said information be dismissed.

And for plea to that portion of the said information as charges the "selling the said cotton to persons residing in the federal lines during the rebellion, and at a time when all commercial intercourse between persons residing within the lines of the United States and persons in rebellion and resistance to the laws and authority of the United States, thereby aiding, abetting, and promoting said persons in their said rebellion and resistance to the laws and authority of the United States," said claimant doth allege, propound, and plead that

the said selling of the said cotton in the sale made by the said
39 Julius C. B. Mitchell to the said Bank of Louisiana, as the same is hereinabove in this answer stated and set forth, and not another or different sale; and [and] the said claimant avers that the said Bank of Louisiana, before and at the time of the purchase by it of said cotton from said Mitchell was, and still is, a corporation duly created by and organized under an act of the legfslature of the State of Louisiana, passed on the 7th day of April, in the year of our Lord 1824, and that the said claimant is ready to verify; wherefore said claimant, in behalf of said bank, and of all parties concerned or interested in said cotton, prays judgment of that portion of said information, and that the same be dismissed.

And for further plea to the allegation of the said information in the plea next above set forth, the said claimant doth allege, propound and plead that no forfeiture or condemnation of said cotton should be had or made by this court, because he says that the selling in the said allegation mentioned is the identical sale made of the said cotton by said Julius C. B. Mitchell to the said Bank of Louisiana, as the same is alleged and propounded hereinabove in this an-
40 swer; that the said bank then was, and from thence at and until the present time has been, and is an incorporated institution, duly and legally incorporated by the act of the legislature of the State of Louisiana as aforesaid, and located and organized in the city of New Orleans, in the State of Louisiana; and said claimant avers that on the 11th day of September, A. D. 1862, at the city of New Orleans, the said city then being in the possession of the military authorities of the United States, the same being in the command and under the military jurisdiction of Major General Benjamin F. Butler, a major general in the military service of the United States of America, the said Major General B. F. Butler so being in command, and having full authority to give a permit to the agent of said bank to pass through the military lines of the United States, then in command of the said Butler, and intervening between the said city of New Orleans and the city of Montgomery, in the State of Alabama, which was without the said military lines of the United States, did on the eleventh day of September, 1862, give to the said Bank of Louisiana the following permit to pass the said military lines of the United States, and to proceed to the State of Alabama, as fol-
41 lows, that is to say:

"HEADQUARTERS DEPARTMENT OF THE GULF,
"*New Orleans, Sep. 11th*, 1862.

"Mr. George G. Steever, agent of the Bank of Louisiana, has safe conduct through my lines to carry with him a sealed package under the seal of the Bank of Louisiana, of whatever size it may be, bearing that seal; such package not to be searched or interfered with; and also to return through the lines with safe conduct, he reporting himself on his return with whatever he may have on his return, to these headquarters. His personal baggage will be searched as usual.

(Signed) "BENJAMIN F. BUTLER,
"*Major General Commanding.*"

And said claimant avers that the said permit was granted under a request made in obedience to a memoranda of said Bank of Louisiana, adopted by the board of directors of said bank, on the 8th day of September, 1862, that portion of said memoranda referring to and asking for such permit being in the following words: "That General Butler give permission to the agent of the bank to carry with him the confederate notes now belonging to it, in order to pay the balances due banks in the confederacy, and to invest the surplus
42 in bills of exchange, or in any other way not incompatible with the spirit of this agreement," signed by Augt. Montrevret, cash'r. And said claimant avers that the said sealed package, bearing the seal of the bank, containing treasury notes of the said so-called Confederate States, and the said package so containing said notes was brought by the said Steever, under and by virtue and in accordance with the permit of the said Benj. F. Butler, through the military lines of the said Butler, into the then so-called Confederate States, and the said notes were use in the manner contemplated by said memoranda of said bank which was submitted to said General Butler, and on which his said permit was granted, and not otherwise; and the said cotton was purchased with a part of the money or treasury notes of the said so-called Confederate States thus brought through the said lines in virtue of said permit and authority so by the said general in command granted, and said cotton was never used for any purpose, but was stored away and kept for the
43 use of said bank, to enable it to meet its liabilities and engagements, and for no other purpose; and this the said claimant is ready to verify: wherefore he prays that no forfeiture or condemnation be had under said allegation in said information.

And for further plea to the whole of the said information, said claimant doth aver, allege and plead, that no seizure of the cotton sought to be condemned was ever made, or caused to be made by the President of the United States, and the said cotton had not been seized and was not in possession of the marshal of said district at the time of the exhibition of said information against the same, as alleged, and this the said claimant is ready to verify: wherefore he prays judgment that said information and the proceedings thereunder be dismissed.

And for further plea said claimant says, avers, propounds and pleads, that the said cotton in said information mentioned was not seized during any insurrection against the government of the United States, as contemplated by the act of the 6th Aug't, 1861, upon which the information is predicated, and this he is ready to
44 verify: wherefore he prays judgment, &c.

And the said claimant, by way of further plea as well as answer, doth say and propound, that no proclamation has been made or published by the President of the United States since the passage of said act of 6th August, 1861, as prescribed and specified in said act, and this he is ready to verify: wherefore, &c.

And for further plea and answer, said claimant denies that any lawful order of seizure was issued by the said district attorney, J.

Q. Smith, esq., seizing said cotton, or that any such order could lawfully be issued by him, and so he says he, the said cotton, was not lawfully seized before said information was filed; and the said claimant doth allege and propound the following exceptive allegations to the said information, and doth aver, as he is advised and believes, and so states, that said information is not sufficient in law for the said informant or the United States to have condemnation of the said cotton in said information, in this, to wit:

1. Said information purports to be on behalf of the United States and an informer, and fails to show who the informer is, or
45 that he has afforded any information as the predicate of said information.

2. Said information is predicated upon an alleged seizure, on land, at a time of profound peace, and long after the civil jurisdiction of this court was established in said district, and when there was no insurrection or rebellion, and the laws of the United States were being fully enforced without opposition or obstruction.

3. Said information fails to show a valid seizure of said cotton as the predicate for the jurisdiction of said court.

4. Fails to show that the President of the United States made any proclamation after the passage of the act on which the proceedings are founded, to wit, the act of the 6th August, 1861, as set forth and required by said act as necessary to precede the right of seizure of said cotton.

5. Said information fails to show at what time in the year 1865 said cotton was used and employed in aiding, abetting and promoting insurrection and rebellion against the United States.

6. Said information contains a misjoinder of causes of forfeiture, and fails to state them in such manner that a clear and
46 distinct issue may be made thereon, and so that the evidence may be confined to the matters in issue.

7. Fails to show that the President caused said cotton to be seized, or that it was seized or captured during any insurrection.

8. Said information sets forth a warrant of seizure was issued, but fails to show that said warrant for the seizure of said cotton was predicated on any oath or affirmation as required by the Constitution of the United States.

9. Said information fails to set forth all the facts necessary to give this court jurisdiction, which facts should affirmatively appear.

10. The allegation in said information that said cotton was used with the knowledge and consent of the owners thereof, by selling and subscribing the same to what was known as the so-called Confederate States cotton produce loan for the defence of the Confederate States, to the agents of the Confederate States, is repugnant, as involving a sale and a loan.

11. That at the time of the alleged seizure of said cotton,
47 as in said information is alleged and set forth, there was no law of the land authorizing such seizure, or the proceedings under the same had in this case—the said act of 1861, on which said proceedings are based, being limited to the time during an insurrec-

tion in the United States--and the alleged seizure in this case was made after the President of the United States had by public proclamation made known that the insurrection had ceased, and that peace had been re-established in said State of Alabama and other States.

12. That said information assumes that said act of 6th August, 1861, was intended to apply to seizures on land in time of peace, and if such be the true construction the same is unconstitutional and void, because it deprives the citizen of his property without due process of law. It takes from the claimant the right of trial by jury. It is an enlargement of the admirality jurisdiction of the District Court unwarranted by the Constitution.

Wherefore this claimant prays that this honorable court
48 will pronounce against the demand set up in the said information mentioned and set forth, with costs.

JOSIAH MORRIS.

Sworn to and subscribed before me this the 7th day of June, 1866.

E. C. V. BLAKE, *Cl'k.*
By N. W. TRIMBLE, *Dep'ty Cl'k.*

HEADQUARTERS 16 ARMY CORPS U. S.,
*Montgomery, July 10th,* 1865.

J. H. Nettles, justice of the peace in and for said county:

You are hereby authorized to issue a writ of attachment at the suit of E. H. Wilson, against the Bank of Louisiana, and appoint the necessary bailiffs to execute the necessary process, levying the same upon any property of the said bank within your jurisdiction, when, proper affidavits and bonds being filed with you, you will make this writ returnable to the first properly organized court under the laws of the United States having jurisdiction in such cases.

By order of Maj. Gen'l A. J. Smith:

J. HOUGH, *Lt. Col. A. A. Gen'l.*

49 THE STATE OF ALABAMA, *Montgomery County*:

Before me, James H. Nettles, a justice of the peace in and for said county, personally appeared Edw'd H. Wilson, who being duly sworn deposes and says, that he is a resident of New Orleans, Louisiana, and that the Bank of Louisiana, a foreign corporation organized under the laws of Louisiana, is justly indebted to him, the said Edw'd H. Wilson, in the sum of ninety-three thousand four hundred and twelve and 50-100 dollars, in coin, after allowing all just offsets and demands, and that the said Bank of Louisiana, to the best of his knowledge, information and belief, has not sufficient property within the State of Louisiana wherefrom to satisfy the debt, and that this attachment is not sued out for the purpose of vexing or harassing said defendant or other improper motive.

EDWARD WILSON.

[5-cent stamp ]

Sworn to before me this 10th day of July, 1865.

J. H. NETTLES, *J. P.*

Having been satisfied by the evidence that the stamps on
50 this instrument were not withheld to hinder or delay the payment of the revenue of the United States, but from accident, and the impossibility of obtaining the stamps at the time, I have imposed and cancelled the proper stamps and remitted the penalty Dec'r 12th, 1865.

JAMES BERNEY,
*Collector 2nd District Ala.*

THE STATE OF ALABAMA, *Montgomery County*:

Know all men by these presents that we, E. H. Wilson, J. F. Johnson, D. Browder and A. D. Witherspoon are held and firmly bound unto the Bank of Louisiana, in the sum of one hundred and eighty-six thousand eight hundred and twenty-five dollars, to be paid the said Bank of Louisiana, heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 10th day of July, 1865.

The condition of the above obligation is such that whereas the above-bound Edward H. Wilson has on the day of the date hereof prayed an attachment at the suit of himself, against the estate
51 of the above-named Bank of Louisiana, for the sum of ninety-three thousand dollars four hundred and twelve 50-100 dollars, and has obtained the same returnable before the next term of the Circuit Court of said county: Now, if the plaintiff shall prosecute his attachment to effect, and pay the defendant all such costs aud damages as it may sustain by reason of the wrongful or vexatious suing out such attachment, then this obligation to be void, otherwise to remain in full force and effect.

[L. S.] EDWARD H. WILSON.
[L. S.] J. F. JOHNSON.
[L. S.] D. BROWDER.
[L. S.] A. D. WITHERSPOON.

STATE OF ALABAMA, *Montgomery County*:

To any sheriff of the State of Alabama, greeting:

Whereas Edward H. Wilson, a citizen of the State of Louisiana, hath complained on oath to me, J. H. Nettles, a justice of the peace for said county, that the Bank of Louisiana, a corporation organized under the laws of said State of Louisiana, is justly indebted to him in the sum of ninety-three thousand four hundred and twelve
52 50-100 dollars in coin, and has made affidavit and given bond as required by law, you are hereby commanded to attach so much of the estate of said Bank of Louisiana as will be of value sufficient to satisfy the said debt and cost, and such estate, unless replevied, so to secure, that the same may be liable to further proceedings thereon to be had before the courts, when and where you must make known how you have executed this writ.

Witness my hand this 10th day of July, 1865.

J. H. NETTLES, *J. P.*

MONTGOMERY, ALA., *July* 10, 1865.

I acknowledge myself security for all costs in this case.

H. C. SEMPLE.

*Attachment, returnable to the next term of the Circuit Court of said county.*

EDWARD H. WILSON
*vs.*
BANK OF LOUISIANA.

STATE OF ALABAMA, *Montgomery Co.*:

To Wm. H. Ogbourne:

You are hereby appointed bailiff to execute the said process in said cause in Montgomery county. This appointment is made under the authority vested in me by the order of Maj. Gen'l A. J. Smith,
53 16th army corps U. S. You will proceed to execute the said process according to law, and return the same with your action thereon to the next term of the Circuit Court of said county.

J. H. NETTLES, *Justice of the Peace.*

STATE OF ALABAMA, *Montgomery Co.*:

Received for execution this 11th July, 1865.

W. H. OGBOURNE, *Bailiff.*

Levied this attachment on thirty-four bales of cotton as the property of the defendant, stored on the plantation of Alexander W. McDade, 3 o'clock p. m., July 11, 1865.

W. H. OGBOURNE, *Bailiff.*

Levied this attachment on one hundred and ninety-eight bales of cotton as the property of defendant, stored on the [the] plantation of Col. Julius C. B. Mitchell, in Montgomery county, half-past 3 o'clock p. m., July 11th, 1865.

W. H. OGBOURNE, *Bailiff.*

Levied this attachment on twenty-seven bales of cotton as the property of defendant, stored on the plantation of Wm. E. Lucas, in Montgomery county, twenty minutes past 6 o'clock p. m., July 11th, 1865.

W. H. OGBOURNE, *Bailiff.*

Having been satisfied by evidence that the stamps were not
54 withheld from this instrument to evade or delay the payment of the revenue, but from accident and the impossibility of obtaining them at the time, I hereby remit the penalty and impose and cancel the proper stamps, Dec'r 2, 1865.

JAMES BERNEY, *Col 2 District Ala.*

THE STATE OF ALABAMA, *Montgomery County*:

To any sheriff of the State of Alabama greeting:

Whereas Edward H. Wilson, a citizen of the State of Louisiana, hath on oath complained to me, J. H. Nettles, a justice of the peace in and for said county, that the Bank of Louisiana, a corporation organized under the laws of the State of Louisiana, is justly indebted to him in the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin, and has made affidavit and given bond as required by law, you are hereby commanded to attach so much of the estate of said Bank of Louisiana as will be of value sufficient to satisfy the said debt and costs, and such estate unless replevied, so to
55 secure, that the same may be liable to further proceedings thereon to be had before the Circuit Court of Montgomery county, at the next term, when and where you must make known how you have executed this writ.

Witness my hand and seal, this 10 July, 1865.

J. H. NETTLES, *J. P.*

This is a branch of attachment, and with the original writ in Montgomery co., and another branch writ to Lowndes co., forming but one proceeding or suit in attachment, and are for the same cause of action, constituting but one suit.

J. H. NETTLES, *J. P.*

*Attachment, returnable to the next term of the Circuit Court of Montgomery county.*

EDW'D H. WILSON
*vs.*
BANK OF LOUISIANA.

THE STATE OF ALABAMA, *Montgomery Co.*:

To Francis C. Randolph:

You are hereby appointed a bailiff to execute and return this branch writ of attachment in said cause in the counties of Lowndes and Autauga. You will execute and return the same according to law and the process thereof. You are appointed
56 under authority vested in me by order of Maj. Gen'l A. J. Smith, commanding 16th army corps, U. S.

J. H. NETTLES,
*Justice Peace.*

AUTAUGA COUNTY, *July* 11, 1865.

Levied this attachment this day on fifty-three bales of cotton, marked Z. Pope, on the plantation of Mrs. M. F. Pope, in said county, as property of defendant.

F. C. RANDOLPH, *Bailiff.*

AUTAUGA COUNTY, *July* 12, 1865.

Levied this attachment this day one hundred and fifty-nine bales of cotton, marked W. R. P. [A.], on the plantation of A. Pickett's estate, in said county, as the property of the defendant.

F. C. RANDOLPH, *Bailiff.*

AUTAUGA COUNTY, *July* 12, 1865.

Levied this attachment this day on one hundred and five bales of cotton, marked T. P. E., on the plantation of the estate of T. P. Ficth, in said county, as the property of the defendant.

F. C. RANDOLPH, *Bailiff.*

57 THE STATE OF ALABAMA, *Montgomery County*:

Know all men by these presents, that we, Josiah Morris as principal, and William C. Ray, A. F. Given, and E. H. Metcalf and D. Browder, as his sureties, are held and firmly bound unto Edward H. Wilson in the penal sum of one hundred and eighty-six thousand eight hundred and twenty-five dollars, for the payment of which to said Edward H. Wilson we bind ourselves firmly by these presents. The condition of this obligation is such that whereas the said Edward H. Wilson heretofore to wit, on the 10 day of July, 1865, sued out an attachment before Jas. H. Nettles, a justice of the peace in and for said county of Montgomery, returnable to the then next term of the Circuit Court of said county of Montgomery against the Bank of Louisiana, for the sum of ninety-three thousand four hundred and twelve 50-100 dollars in coin; and whereas said attachment has been levied on two hundred and seventy-seven bales of cotton, to wit, 109 marked J. C. B. M., 73 marked J. C. B., 32 marked A. McD., 51 marked N. H., 12 marked N. H. Lucas, and whereas by order
58 of the said court the said cotton is allowed to be replevied and the above-named Josiah Morris is willing and desires to replevy the same; and now here does replevy the same: Now, if the defendant fail in the action and the said Josiah Morris or his surities will return the said cotton attached as aforesaid within thirty days after judgment, then this bond to be void, otherwise to be of force.

Witness our hands and seals this 9th day of January, 1866.

| | | |
|---|---|---|
| (Signed) | [SEAL.] | JOSIAH MORRIS. |
| | [SEAL.] | WILLIAM C. RAY. |
| | [SEAL.] | A. F. GIVEN. |
| | [SEAL.] | E. H. METCALF. |
| | [SEAL.] | D. BROWDER. |

Approved January 9th, 1866.

A. H. JOHNSON, *Sheriff, N. C.*

District Court United States for the middle district of Alabama.

UNITED STATES OF AMERICA
*vs.*
192 BALES OF COTTON.

Comes Josiah Morris and makes oath that the Bank of Louisiana, on whose behalf the claim is made in this case, is the true and
59 bona fide owner of the cotton mentioned in said libel of information, and that no other person is the owner thereof, and he further states that he is duly authorized by the said owners to make said claim.

JOSIAH MORRIS.

Sworn and subscribed this the 1st day of June, 1867, in open court.

RICHARD BUSTEED, *Judge, &c.*

Filed in open court June 1st, 1867.

E. C. V. BLAKE, *Clerk, &c.*

Spring Term, May 31st, 1867.

UNITED STATES
*vs.*
192 BALES OF COTTON, BANK OF LOUISIANA, and Caulkins & Harris, claimants.

This day comes Francis Bugbee, esq., United States attorney, who appeared for the United States, Watts & Troy, counsel for Caulkins & Harris, and Rice, Semple & Goldthwaithe, and Chilton & Thorington, for the Bank of Louisiana, and the case being fully
60 heard upon the libel of information, answer and proof, it was submitted to the court for his decision to be rendered in vacation after argument verbal and written by the respective counsel.

In the District Court of the U. S. for the middle district of the State of Alabama.

*De cree.*

UNITED STATES OF AMERICA
*vs.*
ONE HUNDRED AND NINETY-TWO BALES OF cotton, the Bank of Louisiana *et al.* claimants.

On hearing the proofs and arguments of counsel, and due deliberation being thereupon had, it is ordered, judgment for the United States of America, and that the property mentioned in the libel of

information be and is hereby declared forfeited and condemned to the use of the said United States of America, as provided by law; and that execution issue for costs against the claimants.

March 13, 1868.

RICHARD BUSTEED,
*U. S. District Judge for Alabama.*

61 The right of appealing from this order is reserved to all the parties, as if the same had been made in open court. Notice of this order will be given to the attorneys of record, and the right of appeal is limited to the same time prescribed by law.

RICH'D BUSTEED, *Judge.*

Filed March 14th, 1868.

E. C. V. BLAKE, *Cl'k.*

(Endorsed thereon.)

Copies of the within served on Samuel F. Rice, esq., and Thomas H. Watts, esq., attorneys of record for claimants, this 19th day of March, A. D. 1868, at 3 p. m.

E. C. V. BLAKE, *Cl'k.*

District Court of the United States for the middle district of Alabama, May term, 1868.

*Bill of exceptions and exhibits.*

UNITED STATES OF AMERICA
*against*
192 BALES OF COTTON, JOSIAH MORRIS, agent for and on behalf of the Bank of Louisiana, claimants, *et als.*

62 Be it remembered, that upon the trial of the above case, the exceptive allegations of the claimant, as shown by the answer on file, were taken up by the court and severally discussed by the counsel for the respective parties, and were by the court severally overruled, and to the overruling of each of which by the court the claimant excepted.

The claimant then insisted that he had a right to have the facts of the case tried by a jury, and demanded a jury trial in said cause; but the court held that the claimant was not entitled to a jury, and that the court was to determine the facts without a jury, and refused the claimant a trial by jury, to which refusal the claimant excepted.

Thereupon the court proceeding to hear the cause without a jury, the following proof was submitted and proceedings had and exceptions taken by the claimants, as shown by the annexed exhibit of said proceedings, hereto attached and made part hereof, marked ex-

hibit "A," and when it is said in said exhibit that an exception was noted, the exception was duly taken and reserved by the
63 party against whom the ruling was made; and this is signed and sealed as a record of all the proceedings had on the trial of the cause, and ordered to be enrolled as a part of the record in said cause.

[SEAL.] RICHARD BUSTEED,
*U. S. District Judge for Alabama.*

District Court of the United S. for the middle district of Alabama, May term, 1867, to wit, May 31st, 1867.

*Exhibit A.*

UNITED STATES AMERICA
*vs.*
192 BALES OF COTTON, JOSIAH MORRIS FOR THE Bank of Louisiana, *et als.*, claimant.

Hon. Richard Busteed, presiding.

F. Bugbee, esq., U. S. district att'y, with whom was James Q. Smith, esq., for the United States.

S. F. Rice, Wm. P. Chilton, and Abram Martin, esq'rs, for Josiah Morris, claimant, for the Bank of Louisiana.

Thos. W. Watts and D. S. Troy, esq'rs, for Harris & Caulkins, cl'm'ts.

The court having disallowed each of the exceptive allegations of Morris, and also each of the exceptive allegations of Har-
64 ris & Caulkins, claimants, claiming adversely to said Morris, and having refused a jury trial in the case, proceeded to hear testimony, as follows, the claimants severally excepting to said ruling :

James A. Farly, introduced by James Q. Smith, esqr., on behalf of the United States, testified as follows: I was agent of the Confederate States at Montgomery, Alabama, to collect the produce loan for about three years. The paper shown me is a copy of the original subscription to the produce loan of the Confederate States, sent to me from Richmond.

Rice. I object to the copy as evidence, without proof of the loss of or accounting for the absence of the original.

Court. Objection overruled and exception noted.

Rice. I deny that the paper is a copy of the original, and in support of this I ask the witness to state whether he knows it to be a copy.

Witness. I do not know it to be an exact copy.

Court. Was this paper sent to you by the proper official authority of the Confederate States ?

Witness. It was.

65 Rice. I object to both question and answer.

Court. Objection overruled and exception noted.

Smith. Read the caption to the subscription.

Witness, (reading.) 1861–'62; list of subscription to produce loan, payable at Montgomery, Alabama, names of subscribers, residence, articles subscribed, by whom payable, date.

Smith. Do you find on the list the name of J. C. B. Mitchell?

Rice. I object to the question.

Court. Objection overruled and exception noted.

Witness. I find the name of J. C. B. Mitchell on the list as a subscriber of 150 bales of cotton, to be delivered at Wm. Taylor & Co.'s warehouse; Wm. Taylor & Co. were public warehouse men in the city of Montgomery. The subscribed to the cotton loan were at liberty to select their own warehouses. The cotton was subscribed for the purpose I have stated. I know J. C. B. Mitchell.

Smith. Do you know what position he (J. C. B. Mitchell) held in the confederate army?

Rice. I object to the question as irrelevant and illegal.

Court. Objection overruled and exception noted.

Witness. He was a colonel in one of its regiments; I do not think he continued in the service until the close of the rebellion;
66 he was in arms against the United States after the subscription to the cotton loan. I do not know whether he was in arms in 1863, and I do not know when he left the service.

*Cross-examined by Rice.*

Witness. The proceeds of the subscription to the "produce loan" were to be paid to the Confederate States in money.

Rice. What do mean by money?

Smith. I object to this testimony on the ground that the subsciption was in writing, and the writing is the best evidence.

Court. Objection sustained, evidence excluded, and exception noted.

Rice. State the terms of the subscription to the produce loan, of which you have spoken.

Smith. I object to the question on the ground that the subscription was in writing, and the writing is the best evidence.

Court. Objection overruled, and Mr. Smith, I note your objection.

Witness. It run about this way: "We, the subscribers promise to subscribe the proceeds of so much cotton, corn, wood, brick, &c., to be delivered at a point to be designated by the subscribers, and the proceeds paid by our factor to the Confederate States or
67 its agent."

Rice. Look at the paper here shown you, and state what you know about it.

Witness. Yes; it is the form of subscription to the produce loan of which I have spoken.

Court. Here the court asked to see the paper, and read and copied it as follows: "Subscription of crops for defence of the Confederate States of America, May 20th, 1861. We, the subscribers,

agree to contribute to the defence of the Confederate States the portion of our crop set down to our respective names, the same to be placed in warehouse or in our factor's hands, and sold on or before the first day of* next, and the net proceeds of sale we direct to be paid over to the treasurer of the Confederate States for bonds for same amount, bearing 8 per cent. interest: names, quantity subscribed, place of delivery, name of factor or warehouse."

*N. B. The agent in charge of this subscription will fill the blank as to the date of sale with the month best suited to the locality of the subscriber, in all cases selecting the earliest practicable date.

Witness. That is the form of subscription used in the district or county in which J. C. B. Mitchell resided at the time of said
68 subscription. I know of no other form of subscription used.

Judge Chilton was most prominent in getting subscriptions; others assisted.

Rice. What kind of money or currency were the proceeds of the produce or things subscribed to said produce loan to be paid?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Were you, as agent, authorized to receive payment in satisfaction of subscriptions to said produce loan in currency; and if so, in what kind of currency?

Smith. I object to the question.

The court overruled the objection, refused to hear argument from Mr. Smith in support of it, but suggested to him that if the objection was made to the latter part of the question it would be sustained.

Smith. Then I object to the latter part of the question.

Court. Objection sustained and exception noted.

Witness, (answering the first part of the question.) I was authorized to receive payment of subscription in currency.

Rice. What was the currency and the only currency in
69 Ala. and the other Confederate States at the time of Mitchell's subscription?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Was Mitchell's subscription paid to you, as agent, under the authority given you as agent to receive payment in currency?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Was Mitchell's subscription paid in currency?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Was Mitchell's subscription paid or satisfied?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Was any cotton designated or set apart by Mitchell under his subscription?

Witness. Not to my knowledge.

Rice. What did Mitchell do under his said subscription?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. What was done under said subscription?

Smith. Objected to question; objection sustained, and ex-
70 ception noted.

Rice. Was there any other agent of the Confederate States in Mitchell's district except yourself?

Witness. No.

Rice. Did Mitchell deliver to you or to the confederate government any cotton under said subscription?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Did you receive anything for said subscription, or in discharge of it?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Have you stated all that was done in relation to Mitchell's subscription?

Smith. I object to the question.

Court. Objection sustained; exception noted.

Rice. State all that Mitchell did under said subscription, or in relation thereto.

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Did you, as agent of the Confederate States, ever demand or ask of said Mitchell a settlement of his said subscription?

Witness. I did.

71 Rice. State all you know in relation thereto.

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Did he settle it?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. What did Mitchell do when you asked for a settlement?

Objected, and objection sustained and exception noted.

Rice. When was it that you asked him for a settlement?

Witness. In 1863.

Rice. Did he settle?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. How did he settle?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Julius C. B. Mitchell, introduced by Mr. Smith, on behalf of the United States, was then sworn:

Smith. Did you, at any time, sell the cotton in controversy here to any person?

Rice. I object to the question, if the court please, that——

Court. Objection overruled and your exception noted, Judge Rice.

72 Witness. Yes; I sold it to Hardaway and Ray for Steever, in October, 1862. The sale was verbal. Hardaway & Ray were cotton brokers; Steever was here purchasing cotton in this city.

Smith. State who Steever said he was buying this cotton for.

Witness. No; I can't say that he said. I don't know where Steever resided before he came to Montgomery; he never told me. and I never heard him say where he resided. I was a colonel in the confederate States army after the subscription to the produce loan. I remained in that service untill May, 1865. I sold 198 bales of cotton to Steever; I subscribed 150 bales to the confederate States loan.

Smith. Was the cotton you sold Steever the same cotton intended to be delivered to Farley as agent of the confederate States, under your subscription to the produce loan?

Rice. I object to the question.

Court. Objection overruled and exception noted.

Witness. Yes.

How long did this cotton remain on your plantation after its sale to Steever?

Witness. The cotton remained on my plantation, or at my home residence until Dec., 1865.

73 Q. Did you, in that ~~interview~~ Interview, have the ~~case of~~ care of the cotton?

Witness. Answer. Well, sir, I think not.

Smith. In whose care was it eft?

A. No one had particular care of it; it was at my residence, and was originally stored there, to be sent to Montgomery to pay the subscription to the Confederate States, that is 150 bales of it.

Smith. After the sale to Steever, for whom was it kept?

A. It was not changed after the sale to Steever, and was then kept for Steever, till Oct'r or Nov'r, 1865, and after that time or about that time, I began to entertain veiws that it belonged to me, and consulted lawyers on the subject. I do not know where Steever resided after the sale. He was seen about Montgomery frequently.

Smith. Did Steever demand these bales, and for whom?

Witness. Steever called on me for the cotton. I am not certain that he made a direct demand himself, but the parties, Hardaway & Ray did so. I understood from Ray & Steever that the demand was made for the Bank of Louisiana.

74 Smith. Was the cotton removed from your house into town?

Witness. I don't know whether the cotton came to town or not; a part of it, about 70 or 80 bales was brought to town in my own wagons, the rest of it was supposed to have been taken off by Harris & Caulkins.

*Cross-examined.*

By Rice:

Witness. I became a colonel in the C. S. army in the spring of 1862. The cotton was raised by me on my plantation in Montgomery county; at the time I made the subscription I was not

colonel in the C. S. army; my best recollection is that I was not in the army at the time I subscribed. I think I was raising troops for the army. I think I made the subscription in the summer of 1861; my recollection is that it was in the year 1861. I am certain I had no cotton at that time. The cotton was in process of being raised at the time I subscribed.

Rice. How much cotton did you raise the year in 1861?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Where did you raise the cotton you subscribed?

75 Witness. I raised the cotton sold to Steever in 1861. I sold him 198 bales. I never made but one sale of cotton to Steever, and that sale embraced all the cotton I raised in 1861. The cotton was sold to Steever in Oct'r or Nov'r, 1862, and at the time of the sale, was at my home place.

Rice. Did you, after the sale to Steever, hold it for the person entitled to it under that sale?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Was the cotton levied on at any time after the sale to Steever?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. After the sale to Steever, was the cotton levied on at any time prior to January 1st, 1866?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Did you, at any time after the sale to Steever, and prior to its removal from your place in the year 1865, make any agreement to hold the cotton for the Bank of Louisiana?

Smith. I object to the question.

76 Court. Objection sustained and exception noted.

Rice. Did you not, at some time, make an agreement to hold the cotton for the Bank of Louisiana?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. While the cotton was at your place and after sale to Steever, but prior to Jan'y, 1866, did you not admit that the cotton belonged to the Bank of Louisiana?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. While you were in possession of the cotton, did you not admit that you held the cotton for the Bank of Louisiana?

Court. I refuse to allow that question to be put, it being in substance the same as those just refused.

Rice. Did you set apart or designate any cotton as embraced by your subscription or intended to be embraced by it?

Witness. I did not; only 150 bales of the crop.

Rice. At any time after your subscription, did you set apart, or designate any cotton for said subscription?

Witness. I did not set a part or designate any cotton for said subscription; only 150 bales of the 189 bales.

77 Rice. What was your last answer to the last question?

Court—Refused to allow the witness to answer this question, and also refused to state how the answer to the last question had been taken down by the court.

Rice. Did you, at any time, set apart any number of bales of cotton for said subscription or as embraced by it?

Witness. No, sir.

Rice. Explain fully what you mean when you speak of part of that 198 bales of cotton being intended to be applied to your subscription?

Smith. I object to the question.

Court. Objection sustained; exception noted.

Rice. What was your subscription?

Witness. The proceeds of 150 bales of cotton.

Rice. How were subscription of that kind payable?

Smith. I object to the question.

Court. Objection sustained; exception noted.

Rice. How was your subscription payable?

Smith. I object to the question.

Court. Objection sustained; exception noted.

Rice. Did you pay your subscription; if so, when, where, and how was it paid?

78 Smith. Objected.

Objection sustained and exception noted.

Rice. State whether, from the time that cotton was raised, ever at any time subsequent thereto it was used to promote the rebellion?

Smith. I object to the question.

Court. Objection sustained and exception.

Rice. After the purchase by Steever from you, did you not receive money for repairing and ~~replacing~~ that cotton as the property of the Bank of Louisiana, and from an agent of that bank?

Court If Mr. Smith objects to that question, the objection will be sustained, unless you strike out "as the property of the Bank of Louisiana."

Smith. I do object to the question.

Rice. I insist on it as asked.

Court. Objection sustained and exception noted.

Rice. Have you received any money for putting that cotton in repair?

Witness. I have from W. C. Ray, who was sworn as a witness in this case at the same time I was. He gave me on the 198 bales between $700 and $900; this was in September or October, 1865.

79 Rice. For whom was Ray acting at the time?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. For whom did Ray at that time say he was acting?

Smith. I object to the question.

Ojection sustained and exception noted.

Rice. Did he not say he was acting as agent for the Bank of Louisiana?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Do you know that he was acting as agent of the Bank of Louisiana?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Did you at any time make any contract with the agent of the Bank of Louisiana to haul said cotton to Montgomery?

Court. That question is in substance the same as several already asked; it is refused, and I refuse to note any exception to the refusal.

Rice. If the court please, I except to the refusal of the court, in refusing the question, and also to the refusal to note my exception.

Rice—to witness. Did you at any time advise Maj. Semple,
80 my partner, that the cotton of the Bank of Louisiana was in danger, and in doing so, did you refer to the cotton you sold to Steever.

Smith. I object to the question.

Court. Objection sustained and exception noted.

Watts. Were the terms of your contract with Hardaway & Ray as brakers for Steever reduced to writing?

Witness. A a bill was given as usual in the purchase of cotton.

Watts. Where is that paper?

Witness. I do not know where it is, or whether it is destroyed.

Watts. Now if the court please, I move to exclude all the testimony of the witness as to the sale to Steever of the 198 bales of cotton, because it now appears that the terms of the contract were in writing, and the writing is not produced, or its absence accounted for.

Smith. Objected to the motion to exclude.

Court. Objection sustained and exception noted.

Watts. Did you execute this paper, showing him his bill of sale to Avery, as follows: "I have hereby sold to E. C. Avery all my
81 interest in the cotton now on my place, and in the warehouse of Lehman and Durr in Montgomery, 193 bales in the aggregate, claimed by the Bank of Louisiana, and levied on by an attachment at the suit of Wilson against said bank, the said E. C. Avery takes the said cotton as it is without any further delivery, and without any warranty as to title or quality; the ~~piece~~ price paid me is ten thousand dollars in United States Treasury notes called greenbacks, and this paper is signed in duplicate by both parties.

J. C. B. MITCHELL.
E. C. AVERY.

Witness:
AUGUSTUS BEACH.
[stamps 6 cents cancelled.]

Witness. I did.

Watts. If the court please, I now offer this bill of sale in evidence.

Smith. I object to it. Rice also objected.

Court. Objection overruled and exception noted; the paper is in evidence.

Watts. Do you know H. C. Caulkins and J. C. Harris?

Witness. I do.

Watts. Who made the trade with you for the cotton?

Witness. They and a man named Avery. Caulkins and Harris were the active parties in the trade, and paid me ten thousand
82 dollars for the cotton, the amount stated in the paper, saying at the time of payment that it had been received from Avery.

Watts. Before the sale to Avery, Harris & Caulkins, had the cotton ever left your possession?

Witness. It had remained on my premises from the time it was grown and packed into bales until the sale to Avery, Caulkins & Harris.

Watts. Were the 70 or 80 bales of cotton delivered by your wagons, delivered before or after the sale to Avery, Caulkins & Harris?

Witness. Seventeen bales were delivered before the sale, and the rest afterwards. It was hauled under a contract, of which Caulkins had notice. I did not deliver the cotton to Caulkins & Harris.

Watts. Did you inform Caulkins & Harris where the cotton was, or where they could get it?

Witness. I did not; the cotton was removed the next day after the bill of sale was signed. I don't know who removed it.

Watts. Have you received a pardon from the President for your participation in the rebellion?

83 Smith. I object to the question on the question that a pardon can not be proved by oral testimony.

Watts. I offer, if the court please, in connection with this question, a record copy of the warrant of pardon.

Smith. I object to the copy also.

Court. Objection overruled and exception noted.

Witness. I was pardoned by the President before the sale to Harris & Caulkins. The pardon was dated August 19, 1865.

Smith. I object to this answer and move to exclude it.

Court. Objection and motion to exclude overruled and exception noted.

Mr. Watts having stated that he had no further questions for the witness, Mr. Smith proceeded to examine him on behalf of the United States, as follows:

Smith. Was your pardon in writing?

Witness. Yes.

Smith. State whether or not the 150 bales of cotton subscribed by you were subscribed with the intent or purpose of being used in aid of the rebellion?

Watts. I object to the question on the ground that on the
84 rebutting examination Mr. Smith can only examine as to new matter brought out by contestants, and this matter was not brought out by us, but on the direct examination.

Court, (after some discussion.) Objection sustained and exception noted.

Smith. State what was said by you to Harris & Caulkins as to the sale of the cotton to the Bank of Louisiana?

Witness. I told them that the cotton had been sold to the Bank of Louisiana.

Smith. Did you tell them that you would take no responsibility on yourself, growing out of the sale.

Witness. I told them that the cotton had been sold to the Bank of Louisiana, and that I would take no responsibility in reference to this cotton, and that I would do nothing until I had consulted counsel. They said they would take the responsibility. I did consult counsel before the sale, and when the sale was made I delivered the contract of sale to Caulkins, who executed it for Avery. Harris went out to get the money; came back with it, and said he got it from Avery. Caulkins signed Avery's name. He said that he
85 was acting for Avery, Harris and himself. Avery was not present. I do not know who removed the cotton from my place. I never saw all of it after the sale. Next day after the sale some of it had been removed. After the instrument was signed no one guarded the cotton.

William C. Ray, introduced by Mr. Smith, on behalf of the United States, was then sworn, and testified as follows:

Witness. I reside in Montgomery, and am a cotton-broker. Hardaway & Ray, these parties in the cotton-brokerage business, were employed by Steaver in 1862 to purchase cotton, and we purchased for Steever, from J. C. B. Mitchell, 198 bales of cotton, which Mitchell said was stored on his home place, and I afterwards saw it there. Before the purchase of the cotton, and at the time of it, Steever resided in New Orleans, as he told me. He said he lived in New Orleans. He told me he represented the Bank of Louisiana in making the purchase, and was its agent. Soon after the purchase the president of the bank came to our office and looked over the purchases of cotton with Steever. We bought about 1,800 bales for them.
86 I know nothing as to how they got out of New Orleans, and know nothing of an order for them to come out, except from hearsay. New Orleans was then, in 1862, in the possession of the United States forces. I looked after this cotton with Steever, after the surrender in 1865. The Bank of Louisiana wrote to Steever to see what it would take to put it in order for shipment, and I went with him, and we found the 198 bales of Mitchell's. Shortly after making the estimate of what it would cost to put the cotton in order, Wilson attached the cotton. The cotton was then wasting, and by agreement of counsel on both sides, I sold some of the cotton, and with the proceeds bought bagging and rope and paid Mitchell two dollars per bale for repairing the cotton, and three dollars per bale for hauling it to Montgomery. The plantation of J. C. B. Mitchell is in this county. Neither Steever nor the president of the Bank of Louisiana ever told me how they got out of New Orleans.

Mr. Smith having stated that he had no further question for the witness, Judge Rice proceeded to cross-examine him in be-
87 half of Josiah Morris, claimant, and he testified as follows:

Witness. Hardaway and myself were doing business here in 1862 as cotton-brokers, and [and] at the request of Steever bought 1,800 bales of cotton for the Bank of Louisiana, including the 198 bales from Mitchell. Mitchell agreed to keep the cotton at the risk of the bank.

Judge Rice here stated that he had no further questions for the witness, and Mr. Watts proceeded to cross-examine on behalf of Harris & Caulkins, claimants, as follows:

Watts. In what did you pay Mitchell; what kind of currency when you bought the cotton?

Smith. I object to the question.

Court. Objection overruled and exception noted.

Witness. I paid by a check on the Central Bank of Alabama.

Watts. What was then the only currency then in circulation?

Smith. I object to the question.

Court. Objection sustained and exception noted.

Watts. Were not confederate treasury notes the only currency in circulation here at that time?

88 Smith, I object to the question.

Court. Objection overruled and exception noted.

Witness. I can not answer that question.

Watts. In what sort of currency was the Central Bank paying checks drawn on it then?

Smith. I object to the question.

Objection sustained and exception noted.

Watts. Do you know of any other currency than the confederate treasury notes used here at the time?

Court refused to permit the question, on the ground that it was the same in substance as one previously asked and refused.

Mr. Smith here stated he had no further testimony to offer on behalf of the United States.

Judge Rice thereupon proceeded to offer evidence on behalf of Josiah Morris, claimant, and introduced James A. Farley, previously examined, and re-examined him as follows:

Rice. When examined before, you were asked to state what were the terms of the confederate produce loan. State whether your answer to that question was full or not, and if not, wherein it was deficient?

89 Smith. I object to the question.

Court. Objection sustained and exception noted.

Rice. Is there anything in your answer to that question which you wish to come at.

Court refused this question also, for the same reason, and after

some discussion the court propounded the following questions to witness:

Court. Have you made any mistatements which you wish to correct?

Witness. I have not.

Court. Have you made any omission which you wish to supply?

Witness. Nothing farther than that the government 8 per cent. bonds were to be given for subscriptions.

Judge Rice offered in evidence a transcript from the Circuit Court of Montgomery county, Alabama, of the attachment suit of E. H. Wilson vs. The Bank of Louisiana. He said that it showed that an attachment had been issued by Wilson and levied on the cotton in controversy here, and that Josiah Morris, the claimant, under a statute of Alabama, had replevied the cotton by giving a bond
90 conditioned to have it forthcoming to abide the court, of the attachment suit that this was done before the information in this case was filed, and that Josiah Morris was in possession of the cotton by virtue of his replevy, at the time of its seizure by the marshal, and that the attachment suit is still pending. Judge Rice further stated that the purpose for which he offered the record was to connect Josiah Morris, the claimant, with such title as the Bank of Louisiana had to the cotton.

Watts. I object to the it as illegal and irrelevant.

Court. Objection sustained and exception noted.

John Hardy, introduced by Judge Rice on behalf of Morris, being sworn testifies as follows:

Witness. I was marshal in this district until recently, and sold the cotton in controversy in this case under the order of sale made by the court in this case, and disposed of the proceeds of the sale in accordance with the order of the court.

Rice. What amount was the cotton sold for?

Smith. I object to the question.

91 Court. Objection sustained and exception noted.

Rice. When was the sale made?

Witness. The sale was made on the 16th August, 1866.

Judge Rice here stated that he had no further question for this witness, and the other counsel declined to examine him, thereupon the court, at the request of Judge Rice, directed the clerk to read in evidence the order of sale. The clerk read it as follows: Ordered in this case that unless the United States district attorney, within thirty days from to-day, receive instructions from the Attorney General of the United States to discontinue all proceedings in this case the United States marshal will sell the cotton according to the course and practice in such cases made and provided. This disposition of the case is made by the court of its own motion.

The deputy clerk stated that the clerk himself was absent from the State; that the marshal's return of the sale of the cotton was not in court; that the clerk had charge of it, but that the deputy did
92 not know where it was. This statement was made during the examination of John Hardy.

Judge Rice and Mr. Watts each stated that they had no further testimony to offer in behalf of the respective clients, and Mr. Smith having made the same announcement on behalf of the United States, the court announced that the evidence in the case was closed, and informed the counsel that they must submit their arguments in writing. Judge Rice strenously insisted on the constitutional right of his client to be heard in oral argument. The court refused to hear him on the ground that there was a great pressure of public business requiring the attention of the court, but modified that refusal by allowing each of the counsel to speak one hour, the argument to commence immediately, it being just 10 o'clock p. m.

93 District Court of the United States, for the middle district of Alabama.

THE UNITED STATES
*versus*
ONE HUNDRED AND NINETY-TWO bales of cotton, the Bank of Louisiana by Josiah Morris, agent and claimant for the Bank of Louisiana, respondent.

The above-named respondent conceiving itself aggrieved by the final sentence or decree entered on the 13th day of March, 1868, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and prays that this its appeal may be allowed, and that a transcript of the record, proceedings and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

THE BANK OF LOUISIANA,
By JOSIAH MORRIS, *Agent.*

Upon consideration of the above petition the appeal prayed for is allowed, and the funds arising from the sale of the cotton being left in the custody of the law, no distribution of them will be ordered until after the decision of this cause in the Supreme Court.

March 24th, 1868.

RICHARD BUSTEED.
*Judge Dist. Court U. S., for Alabama.*

94 United States of America to the United States of America, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the pursuant to an appeal from a decree of the District Court of the United States for the middle district of Alabama, wherein the Bank of Louisiana, by Josiah Morris, its agent, is appellant, and you are an apellee, to show cause, if any there be, why said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Richard Busteed, judge of the District Court of the United States, for the middle district of Alabama, this the 24th day of March, A. D. 1868.

[SEAL.] RICHARD BUSTEED,
*Judge of the District Court.*

95 Rec'd in office Aug. 21st, 1868, and executed by serving copy of the within notice on F. Bugbee, U. S. district att'y for middle district of Alabama, this 21st day of August, A. D. 1868.

R. W. HEALY
*U. S. Marshal.*
Per L. F. BRYAN, *Deputy.*

Endorsed: 714. Original. United States vs. 192 bales cotton. Citation. Filed March 24, 1868. E. C. V. Blake, clerk.

96 District Court of the United States for the middle district of Alabama.

UNITED STATES OF AMERICA:

I, E. C. V. Blake, clerk of the District Court of the United States, for the middle district of Alabama, in pursuance of an appeal granted in the case of the United States of America vs. 192 bales of cotton, the Bank of Louisiana, by Josiah Morris, claimant, do hereby certify that the foregoing pages, numbered from number one to number ninety-five inclusive, contain a full, true and correct transcript of all the proceedings had in said cause as the same appears of record in my office; and I do further certify that the petition of appeal hereto attached, with the order of the court granting the same, and the citation hereto attached, are the original petition of appeal and citation in said cause.

Witness my hand and the seal of the United States District Court, for the middle district of Alabama, this the 5th day of December, A. D. 1868.

Attest: E. C. V. BLAKE,
*Clerk of the District Court of the United States for the Middle District of Alabama.*

# SUPREME COURT UNITED STATES.

The Bank of Louisiana, by JOSIAH MORRIS, Agent and Claimant of 192 Bales of Cotton,

*VERSUS*

THE UNITED STATES.

## BRIEF OF WILLIAM P. CHILTON,

*ATTORNEY FOR APPELLANTS.*

# SUPREME COURT UNITED STATES.

The Bank of Louisiana, by JOSIAH MORRIS, Agent and Claimant of 192 Bales of Cotton,

*vs.*

THE UNITED STATES OF AMERICA.

Appeal from the District Court of the United States for the Middle District of the State of Alabama.

1. The case made by this record, is almost identical with that very recently decided by the Supreme Court (No. 52) between the same parties. In this case, as in that, the libel was filed *before* any seizure of the cotton. It was seized by virtue of process issued after the libel was exhibited, thus making the seizure, *under the process of the court*, a *judicial proceeding* in the *first* instance, and depriving the owner of the cotton of a remedy which the law gives him against the party seizing it, unless a certificate be given by the court of "probable cause" for such seizure. If this practice is to obtain, every man's estate is at the mercy of the District Attorney, who has only to file a libel, *not supported* by an oath, and to cause a warrant to be issued upon such libel, and the property taken from the owner; and if this order is to be followed up, as in this case, by another order "*made by the court of its own motion*," for *a sale of the property*—(See printed record, page 36, near the bottom)—while the owner is endeavoring by all legal means to regain it—while he denies the power of the court to condemn it, and claims the right of trial by a jury of his country before his property is thus swept away

from him—I say, if such practice is to obtain in the courts of the country, there would remain but little security for private rights.—(Conk. Treatise (4th Ed.), 512 ; 7 Wal. 578.

2. In this case, also, a jury was denied, against the exception of the claimant, and the court proceeded to try the cause as an instance case in admiralty. This is an error for which the case must be reversed.—See Morris, Agent and Claimant for the Bank of Louisiana, *versus* The United States, No. 52, December 7, 1869, in manuscript ; Conf. Cases, 7 Wall. 462 ; Armstrong's Foundary, 6 Wall. 769 ; Union Insurance Co., 6 Wall. 759 ; The Sarah, 8 Whea. 394.

3. In this case, several sworn pleas, each amounting to a full answer to the libel, so far as they purport to answer the same, were pleaded by the claimant. One of these pleas averred that J. C. B. Mitchell, whom the libel charges with having sold this cotton to Steever in contravention of the non-intercourse act of Congress, and also by another count, as having used said cotton in aid of the rebellion, whereby the same became subject to forfeiture, had been fully pardoned by the President of the United States on the 19th day of August, 1865—eight months before the libel in this case was filed. This plea goes to every count in the libel and amended libel, and the pardon is set out in full in the plea, together with proper averments of Mitchell's compliance with the conditions thereof. To this plea, there was no replication or answer of any kind.

Another defence set up by plea, is, that George G. Steever was fully authorized by Major General Benjamin F. Butler, commanding the United States forces at New Orleans, to pass through the Federal lines, by safe conduct, a copy of which was attached to the plea, and to bring with him certain Confederate notes then in possession of the bank, with which this cotton was purchased ; and it is respectfully submitted, that conceding for the sake of the argument, that General Butler had no power to grant a permit to carry on commerce between the forbidden sections,

nevertheless, as a strategic movement, it was eminently wise to force back the Confederate currency upon the rebel government, and thus to cripple its finances, which are the sinews of war.

To this plea, however, there was no replication or demurrer. The claimant also plead to the whole libel of information that no *seizure* of the cotton sought to be condemned was ever made; that the same was not in possession of the Marshal of said District at the time of the exhibition of said libel against it. Claimant further pleaded that no lawful order of seizure was issued by the said District Attorney authorizing the seizure of said cotton.

The rule adopted by the Supreme Court, No. 27, requires the answer to be sworn to, and in such case, a general replication is necessary to put in issue the averments in the answer, and unless filed, the truth of the answer will be deemed admitted.—See *The Mary Jane*, 1 *Blatchford & Howland*, 390; also *Benedict*, § 367; *Betts Ad. Prac.*, page 50.

4. As it clearly appears from the record that the District Court acted in the matter without jurisdiction, as was decided in the case of Morris, agent and claimant, v. The United States, *supra*, it is useless for me to notice the many errors shown by the bill of exceptions in the rulings of the court upon the admission and rejection of the testimony.

That we were not permitted to show by the records of the State court that the cotton when seized under the alleged warrant in this case, was in the custody of the law, and as showing Morris' connection with it as bailee, was clearly erroneous.

5. It will be observed in this case, that the District Judge sets forth no fact as found by him upon which his decree is predicated, but a bill of exceptions was signed by him, setting forth with much minuteness, all the evidence submitted upon the trial. From that it appears (Record, page 33,) that Mitchell, after the sale to the bank of the cotton in dispute, and before any alleged sale to Cawkins and

Harris, the other claimants, to-wit, on the 19th day of August, 1865, had been pardoned by the President. The effect of this pardon is to relieve Mitchell from the forfeiture of the property seized, so far as respects the right which accrued to the United States.—Armstrong's Foundry, 6th Wallace, 766.

6. One of the counts in the libel seeks to condemn the cotton upon the alleged ground that it was used in aid of the rebellion, by being subscribed to what was known in the then Confederate States as the "Produce Loan." This loan consisted in a promise to deliver certain produce on the part of the subscriber to his factor, at a certain time and place, and the proceeds of such produce, when sold, were to be exchanged with the government, for its eight per cent. Confederate bonds. It was also shown that the agents were authorized to receive the payment of subscriptions in currency.—(See Record, page 27.) The Court, however, refused to permit the claimant to show that Mitchell satisfied his subscription in currency, or otherwise whatsoever.

7. The court also refused to allow the claimant to prove what Mitchell did, under his subscription. By the regulation of the so-called Confederate government, those who had subscribed the proceeds of certain portions of their crops, had the privilege of paying in currency an amount agreed upon between such subscriber and the agent, which was accepted, and obtained in exchange for such currency bonds of the Confederacy bearing eight per cent. interest. Negotiations of this sort were carried on for a while until the bonds became more valuable than Confederate notes, and when this occurred, the authorities refused to accept the payment of all subscriptions, the proceeds of which were due and unpaid, because it then operated a loss to the government. But we were not allowed to prove anything of this kind, or to show in what way Mitchell's subscription was settled, which was clearly erroneous.

8. As respects the claim of Harris & Caulklins, the adverse

claimant's to this cotton, I suppose the Supreme Court will hardly go into the question of its validity in the present posture of the case. The practice has not been, so far as I am advised, to reverse and render, but to remand the cause to the court below, so that it may exercise its original jurisdiction in the matter of determining who is the true owner. Moreover, it is well worthy of consideration, whether, in such cases, parties situated as Harris and his associate, can intervene to try the title as between themselves and the Bank; but be this as it may, it is clear that Harris & Caulklins have no right to the cotton for two reasons; first, assuming the cotton not subject to forfeiture, we purchased and paid for it before they pretended to buy it; second, because we had the cotton in possession, or rather it was in the custody of the law, and held adversely to all but the Bank, and their purchase was of a law suit, champertous and void, as is proven by the receipt in the record under which they claim. That we paid for the cotton in Confederate Treasury Notes, makes no difference, as is shown by the late decision of this court in the case of *Thorington v. Smith & Hartly*, in a recent opinion delivered by the Chief Justice.—See MSS. Doubtless, Harris & Caulkins purchased under advice that such consideration was void. But if such had been the case, Mitchell, under whom both parties claim, had, since the termination of the war, fully recognized our title, and since his pardon and before the purchase by Harris & Caulkins, received a considerable sum from the agent of the Bank of Louisiana, in United States currency, for care and repairs on the cotton, and hauling some of it to market. Surely, under such circumstances, Mitchell would be estopped from asserting any title as against the Bank, and a purchaser from him, especially with notice of our claim, would occupy no better situation than Mitchell himself. "*Nemo plus juris in alium transferre quam ipse habit.*"

I deem it unnecessary to extend these remarks, or to dis-

cuss in detail, the many errors with which the record abounds, as shown by the bill of exceptions. Many of them would hardly arise upon another trial.

W. P. CHILTON,
Attorney for Morris, agent and claimant.

# In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE BANK OF LOUISIANA, by Josiah Morris, its Agent, Claimant of 192 Bales of Cotton, *Appellant*,
*vs.*
THE UNITED STATES.
No. 188.

*Appeal from the District Court of the United States for the Middle District of Alabama.*

STATEMENT FOR THE UNITED STATES.

The record in this case shows that an information was filed in the district court of the United States for the middle district of Alabama, on the 21st of April, 1866, in behalf of the United States and an informer, against 192 bales of cotton, under the act of August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," (12 Stat., 319,) and that, by an amendment thereto subsequently made by leave of the court, the cotton was also proceeded against as forfeited and confiscable property, under the act of July 13, 1861, entitled "An act further to provide for the collection of duties on imports, and for other pur-

poses," (12 Stat., 255,) and the act of July 17, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," (12 Stat., 589.)

The cotton having been seized by the marshal, in pursuance of a warrant of arrest from the court, Messrs. H. C. Caulkins and J. C. Harris intervene as claimants, jointly in their own behalf, and Josiah Morris intervened as claimant in behalf of the Bank of Louisiana, each of these parties claiming the property under a distinct and independent title.

Afterwards, on hearing the cause, the court rendered a judgment declaring the property forfeited to the United States. The decree is dated March 13, 1868, and was filed March 14, 1868.

On the 24th of March, 1868, the said Morris, claimant, in behalf of the Bank of Louisiana, filed a petition with bond for an appeal to this court, which was allowed by the court below on the same day. A citation also issued on that day, and was served on the attorney of the United States, August 21, 1868, and a transcript of the record was filed in this court December 30, 1868.

A bill of exceptions is contained in the record, signed and sealed by the judge, (see printed transcript, pp. 24, 25,) from which it appears, that upon the trial of the cause, the claimant "insisted that he had a right to have the facts of the case tried by a jury, and demanded a jury trial in said cause; but the court held that the

claimant was not entitled to a jury, and that the court was to determine the facts without a jury, and refused the claimant a trial by jury, to which refusal the claimant excepted;" and that, thereupon, the court proceeded to hear the cause without a jury.

From the first clause of the information, (printed transcript, p. 3,) and from the warrant of arrest, (p. 4.) and marshal's return, (p. 4,) it is sufficiently manifest that the seizure was made upon land. The objection that the bill of exceptions was filed in the district court at the May term, 1868, and therefore not until after the judgment was entered, (March 13, 1868,) and not until after the appeal was allowed, (March 24, 1868,) is waived, and it may be regarded as filed before the date of the judgment. It therefore appears that the claimant asked for a jury trial, and that this was refused.

The cotton was sold, and the proceeds are now in the registry of the district court, (printed transcript, p. 37,) and no writ of restitution need issue; in other respects, the order must be the same as in the case of Josiah Morris, agent, &c., *vs.* The United States, No. 52, Supreme Court, Dec. T., 1869. See Union Ins. Co., *vs.* United States, 6 Wall., 759.

E. R. HOAR,
*Attorney General.*

W. A. FIELD,
*Assist. Attorney General.*